

MEMORANDUM

TO: Roger J. MacLean
Chief, Allentown Police Department
FROM: District Attorney James B. Martin
RE: Assault upon Police—Officer involved shooting;
West Oak Street and North Howard Street, February 21, 2013;
actor/decedent: Saturnino Perez DeLaRosa,
a/k/a Raul Ramirez Perez
DATE: June 26, 2013

INTRODUCTION:

On Thursday, February 21, 2013, at approximately 11:33 a.m., the Allentown Communications Center received a call of a man “carrying a machete and talking to himself” in the vicinity of North 12th Street and Linden Street in the city. At 11:34:23 the call was dispatched; and at 11:36:40 it is reported that the actor is seen walking eastbound on Oak Street.

FACTS:

In response to that dispatch, many city patrol units converged on the area. The suspect was first observed walking east on Oak Street (an east/west alley street located between Chew Street to the north and Turner Street to the south) and, as relevant here, between 10th and 11th Streets. When first spotted, the individual was on Oak Street east of 11th Street.

The following descriptions take place within approximately thirty-six (36) seconds. At 11:37:10 Officer David Benner transmits that the actor has unholstered a machete. At 11:37:15 Officer J. Wesley Wilcox reports the same and that the actor is swinging it. At 11:37:32 there is a transmission of “shots fired”. At 11:37:46 there is a second transmission of “shots fired”, and a request for EMS for a man down. One minute, six seconds elapsed from first sighting to EMS call.

The first officer to encounter the individual, later identified as Saturnino Perez DeLaRosa, a/k/a Raul Ramirez Perez, (hereinafter “Perez”) was Officer Benner. Officers Jeffrey Rush; Ismael Segarra; and Wilcox arrived on scene almost simultaneously with Officer Benner. When Officer Benner observed Perez, he quickly turned onto Oak Street and proceeded eastbound toward him. He stopped his patrol vehicle on Oak Street near its intersection with Peach Street (a north/south alley street, at this point between Chew Street to the north; Turner Street to the south; and Howard and 10th Streets to the east, 11th Street to the west). Officer Benner jumped out of his vehicle and drew his duty weapon, pointing it at Perez and yelled “get on the ground”. Benner was approximately eight to twelve feet from Perez, and he described Perez as looking at him, and he “sort of laughed, and pulled a large machete out of the carrying case”. At this time, Perez was heading east and near a parking lot slightly to the north side of Oak Street, west of Howard Street.

By this time, Officers Rush and Segarra were close to Benner. Officer Rush had drawn his duty weapon. Officer Segarra had his taser aimed at Perez. Officer Rush reported that he had observed Officer Benner exit his vehicle at which time Perez took two steps running. As he began to run, he drew a large machete from a sheath in a cross-draw fashion with his left hand. Rush estimated that at this time Perez was five to ten feet from Officer Benner and he began to swing the machete wildly. He was swinging it from a high point to a low point across his body and switching hands with it. He was in a fighting stance. He was backing up and then coming forward toward Officer Benner. Rush drew his pistol, pointed it and gave Perez two clear verbal commands to “drop the weapon”. Perez began advancing on Officer Rush and swinging the weapon wildly and had taken a fighting posture. Perez failed to comply with Rush’s loud, clear, verbal commands at which point Officer Rush discharged one round. (At least two civilian neighbors living in the vicinity of Oak and Howard Streets, Sandy Montez and Ricardo Arroyo, confirmed hearing verbal commands from police to Perez to “drop” and/or “stop”).

Officer Segarra had taken out his taser and was taking aim toward Perez while he was swinging the machete erratically. When he deployed his first cartridge, he was uncertain whether the taser probes made contact because Perez did not show any reaction to the first attempt. At this time, Officer Segarra heard a shot fired (presumably by Officer Rush). Officer Segarra then attempted to switch his taser cartridge in an attempt to take a second shot with the taser. Perez was still swinging the machete around either taking a step forward swinging or backing up swinging, switching the weapon from one hand to the other and mumbling words that could not be understood. The officers were still giving commands to Perez to drop the weapon and stop, which he did not obey.

As this was going on, Officer Rush wondered whether his first shot had missed because Perez did not seem to be phased in the slightest. Perez continued advancing, and Officer Rush

now fired a volley of shots while still west of Howard Street with Perez still in the area of the parking lot on the north side of Oak Street. (There were 4 casings found in this area.) Perez did not stop. He continued to swing the machete and bounce around in a fighting stance. He turned his back to Officer Rush and ran eastbound on Oak Street taking cover behind a large, black pickup truck (later determined to be a Ford F150, which was parked on a lot at the northeast corner of Howard Street and Oak Street). The truck was facing south toward Oak Street.

Howard Street is a north/south alley street located between 10th and 11th Streets and bounded by Chew Street to the north and Oak and Turner Streets to the south in this location. The officers moved east on Oak Street and into Howard Street close to the northwest corner of Howard and Oak. (At this location Howard Street is approximately twelve feet wide.)

Officers Rush, Segarra and Wilcox proceeded into the northwest section of the intersection and slightly north of Oak Street. Officer Benner had proceeded further east on Oak Street and was off to the front, left corner of the Ford F150 pickup.

Perez was initially behind the driver's side of the pickup and then advanced to the rear tailgate area. He was holding the machete above his head and still in a fighting stance. And, as he was advancing toward the officers, Officer Rush fired a second volley of shots at Perez. (There were 9 casings found in this area—eight (8) from Rush's weapon and one (1) from Wilcox's weapon.)

Officer Segarra was to the left of Officer Rush, who was giving commands to Perez to drop the weapon. Officer Segarra observed Perez begin to approach him and Officers Rush and Wilcox, and saw Perez with the machete bring his hand over his head, as if he was going to throw the weapon. At that point, Officer Segarra deployed his last taser cartridge and heard shots fired.

Officer Wilcox had initially approached the scene from Chew Street traveling south on Howard Street. He stopped his vehicle at the intersection of Peach Street and Oak Street and observed Perez walking east on the northern sidewalk of Oak Street and Officers Benner, Rush and Segarra moving toward him. He observed Perez draw the machete from his left hip with his right hand. He observed Perez spin around to face the officers and observed him aggressively swinging the machete from side to side in a slashing motion. He heard Perez yell, "Come on". Officer Wilcox fired a taser cartridge at Perez. He observed the top probe miss as it went over the left shoulder of Perez. He attempted to reload his taser; however, the cartridge had fallen out of his grip and could not be located. He then holstered the taser and drew his handgun. At that point, Officer Wilcox heard shots fired and observed that Perez continued his actions and did not appear to be struck by either gunfire or taser. Perez then moved to the northeast behind the

parked, black pickup truck. Officer Wilcox had moved into the middle of Howard Street just north of Oak and ordered Perez to drop the machete. Perez proceeded to come rapidly around the north side (rear) of the vehicle while swinging the machete, at which point Officer Wilcox fired his handgun one time at Perez. He observed the man stagger backwards and begin to fall over and heard several more gunshots. (During the course of this investigation, the tasers of Officers Segarra and Wilcox were examined and found to be functioning properly. Prior to autopsy, taser probes were found embedded in the outer coat which was worn by Perez.)

In the time between the first encounter with Perez by Officers Benner, Rush, Segarra and Wilcox, at least seven other officers arrived in the area and observed some part of the incident. All seven perceived the same threat as the other officers and all had drawn their duty weapons. It is clear from the interviews of those officers that many heard repeated commands to drop the machete and many observed Perez with the machete in hand swinging it wildly and approaching the officers. Officer Todd Dallmann observed Perez come from the side of the truck toward the officers with the machete in hand swinging it wildly. Officer Daniel Miller observed the suspect walking towards the other officers swinging his machete in a very aggressive manner. Officer Leonard Fritzinger saw; “a male wildly swinging a machete to the left and right as he faced the other officers and then saw him step towards the officers, at which point he heard gunshots.” He observed the male with the machete throw the weapon towards the officers. Officer Scott Magill observed the suspect male waving a large machete towards the officers and waving it around in a chopping motion and advancing towards the officers. Captain Keith Morris observed Perez swinging the machete wildly and aggressively and heard officers shouting orders for him to drop the machete as he ran up to assist. He observed Officers Rush, Wilcox and Segarra in a semi-circle surrounding the black pickup truck, and he took a position to the south. He observed Perez ducking behind the truck, popping up and swinging the machete wildly, and he observed him “quickly approach the officers from the rear of the truck”. Captain Morris observed at least one taser being discharged in that area; however, it did not stop Perez as he brought the machete back as if he was going to throw it at the officers. The officers discharged weapons. The machete was either thrown by Perez, or left his hand before he fell to the ground.

The machete was recovered and examined after this incident. It measured 23 inches in length, with a blade of 18-1/2 inches.

Perez was transported from the scene by EMS (at about 11:47 a.m.) and taken to Lehigh Valley Hospital—Cedar Crest (arriving at about 11:56 a.m.). Unfortunately, despite medical treatment, he died and was pronounced dead at 2:10 p.m.

Virtually every officer who was at the scene in the time immediately following the shooting indicated that Perez was still combative while on the ground and had to be handcuffed and physically held awaiting the arrival of the EMS units.

The duty weapon of the Allentown Police Department is a Sig Sauer P229. Pursuant to policy, each officer carries three magazines with twelve rounds in each and one round in the chamber of the gun. Thus, each officer has thirty seven rounds.

Following this incident, the duty weapons of eleven officers were examined and inventoried. That inspection determined that Officer Rush had fired twelve rounds and Officer Wilcox had fired one round. None of the other officers had fired their duty weapons; however, Officer Segarra and Officer Wilcox had each fired their tasers, Segarra firing his twice. Both tasers were examined and tested and found to be operating properly.

Thirteen (13) spent cartridge casings were found in the area of Oak Street west of Howard and at or near the intersection of Oak and Howard, which is consistent with the inventory and inspection of the duty weapons of Officers Rush and Wilcox.

Ballistics examination by Corporal Mark A. Garrett, Pennsylvania State Police, Bureau of Forensics Services, Firearm and Tool Mark Examiner, at the Bethlehem Regional Laboratory, determined that twelve cartridge cases found at the scene were discharged from Officer Rush's weapon and one cartridge case was discharged from Officer Wilcox's weapon. Again, this was consistent with the investigation.

An autopsy was conducted by R. Starling-Roney, M.D., Forensic Pathologist on February 22, 2013, at 8:00 a.m. The cause of death was determined to be multiple gunshot wounds. The manner of death was determined to be homicide (death at the hand of another). Ten individual gunshot wounds were identified by Dr. Starling-Roney; however, some of these could have been caused by the same bullet. Five (5) spent bullets were recovered from the decedent or his clothing. Three (3) spent bullets were recovered at the scene. Four (4) projectiles are unaccounted for and one (1) is believed to be embedded in the Ford F150 pickup.

Despite a few officers at the scene reporting that they smelled an odor of alcohol emanating from Perez, there was no evidence of intoxication noted on autopsy. Toxicology results for ethanol were negative.

PRIOR ALLENTOWN POLICE CONTACT WITH PEREZ:

(1.) On Wednesday, February 20, 2013, at approximately 10:00 a.m. Allentown Police bicycle patrol officers Leonard Fritzinger, Scott Magill, and Daniel Miller encountered Perez near the intersection of 13th and Linden Streets. It was very cold and windy and Perez was wearing only a T-shirt and shorts. When he saw the officers, he began to wave his arms at them and curse at them as he was walking north on 13th Street toward Turner. Officer Fritzinger approached Perez and asked him if he could speak with him. Perez then said “don’t worry about me, worry about yourself and your family”. Fritzinger then asked him where he lived, and he said “I’m going home”. He refused to provide his name, and continued to walk east on Turner Street to the front of 1216 West Turner Street, where he went onto the porch, inside the home, and closed the door.

A female later identified as Gloria Nieves came out of 1216 West Turner Street; and she was asked by Officer Fritzinger if everything was ok. Nieves stated that the male, (later identified as Perez) is her husband, and that he has not eaten or had anything to drink in the past few days except alcohol. She was asked if her husband ever hurt her or if he is violent to anyone in the house, including himself. Nieves stated that her husband has not been violent. She was asked if she wanted police to help her take her husband to the hospital, and she said, “No”. Nieves was advised to let the police know if her husband became violent or if she needed any help. She stated that she did not need any police assistance. During this interview, the police had the assistance of a neighbor, Jose Cruz, then of 1220 Turner Street, to assist them in communicating with Nieves. In an interview subsequent to the incident Nieves stated to Detective Pedro Cruz that Perez had been violent toward her and that he had assaulted her on February 20, 2013. She indicated that Perez had grabbed her from behind and struck her multiple times on her head and back area.

Although all three of these officers arrived at the scene near Oak and Howard Streets the next day, none of them recognized Perez as the man they had encountered the day before until he was on the ground, after being shot.

There was another Allentown Police encounter with Gloria Nieves on Wednesday, February 20, 2013, at approximately 2228 (10:28 p.m.) at 1216 West Turner Street. At that time, Officer John Leonard responded to a call to assist. Upon his arrival, he spoke to Gloria Nieves, who indicated that she called APD so that they could inject her “brother” Perez with some kind of sleeping drug. She was advised that the police are unable to do that. Nieves indicated that Perez had not slept in eight days and had left the residence prior to APD arrival. Nieves stated that Perez had not made any threats of harm to himself or to others, and that she is “just concerned about the limited sleep he is getting.” Nieves was advised to contact APD if there were any other problems. Thereafter, Officer Leonard searched the neighborhood for Perez, but was unable to locate him.

None of the first officers to encounter Perez on February 21, Officers Benner, Rush, Segarra or Wilcox, had any knowledge of these police encounters of February 20. Nor could they, or should they, have had any such knowledge. These are not matters of the type raised at roll call.

INCIDENTS EARLIER IN THE MORNING OF FEBRUARY 21, 2013:

Subsequent to the officer involved shooting of Perez, a citizen, Salvador Cruz, Jr., came forward and indicated to investigating officers that he knew Perez and knew him as “Baldy”. Cruz indicated that between 10:00 and 11:00 a.m., on February 21st, he was driving in the area of 15th and Turner Streets when he saw “Baldy” standing near a bush near the southeast corner of 15th and Turner Streets. Cruz pulled his car over and got out to speak with “Baldy”. “Baldy” had a machete in the sheath at his side and was talking to himself in incoherent Spanish.

When Perez saw Cruz, he attempted to pull his machete from the sheath and walk toward him. “Baldy” appeared very agitated and was not acting like “his normal self”. After failing to calm “Baldy” down and realizing that he was in danger from “Baldy” and the machete, Cruz got back into his car and drove around the block. He once again attempted to approach “Baldy”, however unsuccessfully.

Subsequent to the incident, one of the investigating officers reviewed footage from an Allentown camera in the vicinity of the Franklin Fire House at 14th and Turner Streets. On the video Perez is seen walking along the south side of Turner Street, in an easterly direction. A vehicle stopped on 14th Street, at Turner, facing northbound is observed. Perez is seen approaching the vehicle making a furtive movement, as if reaching for the machete, which is seen hanging on his right side. With that, the vehicle quickly pulls out from a stopped position and travels east on Turner Street. Perez is seen continuing to walk east on Turner Street.

Olvin Jiminez reported that he had been driving southbound on North 12th Street when he observed a black male in his mid-thirties/early forties in the area of 12th and Linden Streets on the east side of the street. He described clothing similar to that worn by Perez. He noted a two-foot black sheath clipped to the individual’s belt. The individual was making hand gestures, moving, nodding, and talking to himself. Olvin Jiminez had never seen this person before. However, Jiminez reported his observations to the police. His report was the call received at the Allentown Communication Center.

There were two other incidents reported to the police subsequent to the shooting incident: In one, it was reported that a person, who had parked his vehicle in the vicinity of 15th and Turner Streets approximately forty-five minutes earlier than the shooting incident, observed

Perez with a machete. Upon making that observation, the individual got back into his car and left the area. He made no police report. However, he did make his observations known to the police after the media reporting of this incident. In the other, a woman employed at Cedar Crest Nursing Home, who was also a veteran of the Iraq War, came forward after the media reports of this incident, and reported that she had encountered Perez on the day of the incident in the 900 block of Linden Street yelling at a van and generally being “in her face”. She identified Perez as being the man of that encounter.

PRIOR CRIMINAL RECORD OF SATURNINO PEREZ AKA RAUL DIAZ:

Subsequent to this incident and as part of the investigation, it was learned by Allentown Police that Perez had the following criminal history in Connecticut:

May, 1999, Assault on Public Safety (2 counts); April, 2000, Failure to Appear (Felony One); August, 2000, Carrying A Dangerous Weapon; September, 2000, Robbery. He received a combined three-year concurrent sentence on those charges, a one-year suspended sentence, and a one-year period of parole and probation for the two counts of Assault on Public Safety.

On March 4, 2005, he was charged with Assault on Public Safety, Threats and Disorderly Conduct, and Motor Code Violations. He was sentenced to five years in prison plus ten years of special parole, 180 days concurrent and 90 days concurrent. On June 6, 2011, he was paroled to a half-way house (Rodgers House). On July 6, 2011, he withdrew cash from his accounts and fled the facility. A Warrant was issued for his arrest; and that Warrant was outstanding from the State of Connecticut at the time of this incident. However, it was never sent into the NCIC Warrants network; so, Allentown Police were not aware of its existence until after this incident.

It is of interest that with respect to the foregoing, on August 13, 2000, in Norwalk, Connecticut, Perez, then using the name Raul Diaz, was observed by police walking on a sidewalk with a **hatchet** clutched in his left hand. People walking on the sidewalk were running out of his way and appeared to be frightened. According to the police report “[T]he subject appeared agitated and intoxicated.” It was determined at the time that Diaz was in a supervised home release program and **had originally been arrested for assaulting someone with scissors.**

Also the incident in Norwalk on March 4, 2005, involved officers attempting to place Diaz under arrest for violation of the Motor Vehicle Code. Three officers were attempting to handcuff Diaz when he immediately started to fight. He swung a bunch of keys on a string; and, at one point, Diaz got hold of a lapel mic of one of the officers and began swinging the mic in a circular motion so that the officer could not get close to him. At that point, a taser round was fired at him, but Diaz knocked the taser loose with the lapel mic and continued walking away.

Officers were able to get Diaz down to the ground, **but he was still fighting while on the ground; and he had to be tased again.**

PRIOR MENTAL HEALTH OF MR. PEREZ:

Subsequent to this incident, police interviewed Eliezer DeLaRosa who identified himself as the brother of Perez. He stated that Perez had lived in Connecticut for some period of time; that he had a history of mental illness dating back to 1988 or 1989; that he had come to Allentown a year or so prior to this incident; and, **that he had not received any mental health treatment while in Allentown.** A check of mental health agencies in Lehigh County corroborates that there was no known contact with Perez.

LAW:

A police officer is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself...., or when he believes both that: (i) such force is necessary to prevent the arrest from being defeated by resistance or escape and (ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.” 18 Pa.C.S.A. §508(a)(i).

The reasonableness of a law enforcement officer’s use of force is dependent upon “the specific facts and circumstances of the case, which include the severity of the underlying offense, the threat to the safety of the officers or others posed by the suspect in question, and whether that suspect is actively resisting arrest.” *Graham v. Connor*, 109 S.Ct. 1865. *See also Wargo v. Municipality of Monroeville, PA*, 646 F.Supp.2d 777 (W.D.Pa. 2009); *Kopec v. Tate*, 361 F.3d 772, 776–77 (3d Cir. 2004). Courts instruct that the “reasonableness” determination that is to be evaluated must occur from the perspective of the officer at the scene, and without the benefit of hindsight. *Wargo v. Municipality of Monroeville, PA, supra, citing Graham, supra.* “Additionally, determinations of whether a police officer's actions are reasonable must take into account that split-second decisions are required by law enforcement personnel in circumstances that are ‘tense, uncertain, and rapidly evolving.’” *Id.* These considerations are particularly acute in a case, in which officers were confronting an armed, non-compliant and belligerent man.

CONCLUSION:

Based upon the foregoing facts, the totality of the circumstances, and, the law, I affirm my preliminary decision of late afternoon following the incident that the use of deadly force by Officers Jeffrey Rush and Wesley Wilcox against Saturnino Perez DeLaRosa, a/k/a Raul Ramirez Perez, a/k/a Raul Diaz, on February 21, 2013, was justified. No criminal charges are warranted.

James B. Martin, District Attorney
Lehigh County, Pennsylvania